IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1206 OF 2006

Mr.Haresh Jawaharlal Vazirani. ...Applicant
V/s.
State of Maharashtra. ...Respondent

Shri Peter Lobo for Applicant.
Ms.Rajeshree M. Gadhavi, APP for the State.

CORAM : V.M. KANADE, J.

DATED : APRIL 10, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant was arrested in connection with an offence punishable under Section 302 read with Section 34 of the IPC.

2. It is the prosecution case that the applicant and his brothers owned a hotel known as "Radio Restaurant". This restaurant was let out to the deceased Rakesh Shetty by the brothers of the applicant. After it was let out, the deceased changed the name of the restaurant "Hotel Dhuru Bar & Restaurant". Sometime

in 1997, the brothers of the applicant called upon the deceased to hand over the possession of the hotel. On refusal by the deceased Shetty to hand over the possession, a suit was filed for recovery of possession. The brothers gave a Power of Attorney to the applicant to look after the case which was pending in the Court. The Civil Court granted injunction in favour of the applicant i.e. brothers in 2002. It is the case of the applicant that he started receiving threatening calls from the deceased. Accordingly, several complaints were lodged by the applicant to the police. According to the applicant, deceased Rakesh Shetty was a known criminal and several cases were pending against him. The deceased also wrote a letter to the police complaining that he had received threatening calls from the applicant.

3. On 5th June, 2004, the deceased Shetty and the applicant entered into an agreement for settlement of all disputes between them in respect of the said hotel. It was agreed that the deceased would pay a total sum of Rs.20 lakhs towards full and final settlement in monthly

instalments of Rs.1 lakh each starting from June 2004. Accordingly, the said amount was regularly paid by the deceased.

4. on 10th May, 2005, two unknown persons gunned down the deceased. On 11th May, 2005, the police arrested the applicant and one other person by named Sunil Shetty. The applicant is in jail since then.

5. It is submitted by the learned Counsel for the applicant that the applicant is a senior citizen and is suffering from various ailments. He submits that there is no evidence on record to indicate that the applicant had given contract to kill the deceased or was in any manner responsible for his death. He submitted that the dispute between the applicant and the deceased was settled in June 2004 and according to the agreement, the deceased was paying the instalment of Rs.1 lakh per month regularly till he was killed.

6. Learned APP, on the other hand, submitted that the applicant had made telephone call to one Fazlu

Rehman who was a known gangster just one day prior to the incident. She invited my attention to the telephone records which were maintained by a shop at the STD book centre from which place the applicant had made telephone calls.

7. On perusal of the material which is placed, apparently, there is no material to show that the calls which were made from the said STD book was made to said Fazlu Rehaman. Considering the facts and circumstances of the case, in my view, this is a fit case of grant of bail. The applicant is in jail since 11th May, 2005. He is a senior citizen being 65 years of age. There are no criminal antecedents against him. The complaint discloses that two unknown persons had gunned down the deceased. The dispute between the applicant and the deceased had already been settled. The deceased was a known gangster and there are number of criminal antecedents. Considering these circumstances, in my view, the applicant is entitled to be released on bail.

8. The applicant be released on bail in the sum of

Rs.25000/- with one or two sureties in the like amount.

9. The applicant shall not tamper with the evidence or threaten the prosecution witnesses. If any complaint is received by the Investigating Officer, liberty is granted to the Public Prosecutor to apply for cancellation of bail. The applicant shall not leave City of Ulhasnagar without the permission of the Investigating Officer. The applicant shall report to Ulhasnagar N.D. Extortion Cell twice in a month.

. The application is disposed of in the above terms.

(V.M. Kanade, J.)